AO 243 REV 6/82

## MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY 3:04-1001

a

United States District Court	District Southern District or West Virgini
Name of Movant John David Mooney	Prisoner No. Docket No. 04890-088 02-CR-231
Place of Confinement Federal Correctional Institution, P.O.	.Box 6000, Glenville,WV 26351
, , , , , , , , , , , , , , , , , , , ,	(include name upon which convicted)
UNITED STATES OF AMERICA V	
	(full name of movant)
MOT	TION
1. Name and location of court which entered the judgment of	conviction under attack U.S. District Court,
Huntington, West Virginia	
2. Date of judgment of conviction May 12, 2003	
3. Length of sentence one hundred and eighty	
4. Nature of offense involved (all counts) felon in po	ssession of a firearm pursuant to
Title 18 U.S.C. § 922(g)(1) and §	9 <u>24(e)</u>
5. What was your plea? (Check one) (a) Not guilty 口 (b) Guilty XX (c) Nolo contendere □	TEPESA L. DEPPNER, CLERK U.S. District & Eunkruptcy Courts Southern District of West Virginia
If you entered a guilty plea to one count or indictment, and	a not guilty plea to another count or indictment, give details:
-	
6. Kind of trial: (Check one)	
(a) Jury □ (b) Judge only □	
7. Did you testify at the trial? Yes □ No Ⅺ	
8. Did you appeal from the judgment of conviction? Yes 凶 No □	

AO 243 REV 6/82

	me of court Court of Appeals for the Fourth Circuit
(b) Re	sult <u>affirmed</u>
(c) Da	te of result March 22, 2004
O. Other the application Yes □ 1	nan a direct appeal from the judgment of conviction and sentence, have you previously filed any petition ions or motions with respect to this judgment in any federal court?  No [X]
-	answer to 10 was "yes," give the following information:
(a) (l)	Name of court
(2)	Nature of proceeding
(3)	Grounds raised
, ,	
(4)	
(4)	
, .	Did you receive an evidentiary hearing on your petition, application or motion?
(5)	Did you receive an evidentiary hearing on your petition, application or motion? Yes □ No □
(5) (6)	Did you receive an evidentiary hearing on your petition, application or motion?  Yes □ No □  Result
(5) (6) (b) A	Did you receive an evidentiary hearing on your petition, application or motion?  Yes □ No □  Result  Date of result  s to any second petition, application or motion give the same information:
(5) (6) (b) A	Did you receive an evidentiary hearing on your petition, application or motion?  Yes □ No □  Result  Date of result  s to any second petition, application or motion give the same information:  Name of court □
(5) (6) (b) A	Did you receive an evidentiary hearing on your petition, application or motion?  Yes □ No □  Result  Date of result  s to any second petition, application or motion give the same information:
(5) (6) (b) A (1) (2)	Did you receive an evidentiary hearing on your petition, application or motion?  Yes □ No □  Result  Date of result  s to any second petition, application or motion give the same information:  Name of court  Nature of proceeding
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(3) Grounds raised  (4) Did you receive an evidentiary hearing on your petition, application or motion?  Yes □ No □  (5) Result  (6) Date of Result  (d) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?  (1) First petition, etc. Yes □ No □  (2) Second petition, etc. Yes □ No □  (3) Third petition, etc. Yes □ No □  (6) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not not appeal from the adverse action on any petition, application or motion, explain briefly why you did not not appeal from the adverse action on any petition, application or motion, explain briefly why you did not	(6)	Date of result	
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(3) Grounds raised  (4) Did you receive an evidentiary hearing on your petition, application or motion?  Yes □ No □  (5) Result  (6) Date of Result  (7) Date of Result  (8) Date of Result  (9) Thist petition, etc. Yes □ No □  (10) First petition, etc. Yes □ No □  (21) Second petition, etc. Yes □ No □  (22) Second petition, etc. Yes □ No □  (3) Third petition, etc. Yes □ No □  (b) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not appeal from the adverse appear and from presenting additional grounds and facts supporting same.  CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds and facts supporting additional grounds are for your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Extraction or motion or motion?  2. State concisely every ground on which you are being held in custody unlawfully.  2. State concisely ever	(1)	Name of court	
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Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must alrege facts.	(2) (3) (e) If y  2. State of cach g CAUT later of For the cach g	Third petition, etc. ou did not appeal from the concisely every ground or ground. If necessary, you now if you fail to set fort date. your information, the follows transported by a letter of	Yes No he adverse action on any petition, application or motion, explain briefly why you did not he adverse action on any petition, application or motion, explain briefly why you did not
	(2) (3) (e) If y  (2) State of cach great for the statement of the stateme	Third petition, etc. ou did not appeal from the concisely every ground or ground. If necessary, you ion: If you fail to set fort date. your information, the following the set were allegations the	Yes No he adverse action on any petition, application or motion, explain briefly why you did not he adverse action on any petition, application or motion, explain briefly why you did not
the nature of the charge and the consequences of the plea.	(2) (3) (e) If y  2. State of cach g CAUT later of statement other theyou ba Do notion (a) C	Third petition, etc. ou did not appeal from the concisely every ground or ground. If necessary, your lon: If you fail to set fortidate, your information, the following the continuous listed. However, sed your allegations that the check any of these lists will be returned to you conviction obtained by place.	Yes \( \sum \) No \( \sum \)  The adverse action on any petition, application or motion, explain briefly why you did not adverse action on any petition, application or motion, explain briefly why you did not not which you claim that you are being held unlawfully. Summarize briefly the facts support unay attach pages stating additional grounds and facts supporting same. The all grounds in this motion, you may be barred from presenting additional grounds at a clowing is a list of the most frequently raised grounds for relief in these proceedings. Expossitutes a separate ground for possible relief. You may raise any grounds which you have, you should raise in this motion all available grounds (relating to this conviction) on what you are being held in custody unlawfully, ted grounds. If you select one or more of these grounds for relief, you must allege facts. It is you merely check (a) through (j) or any one of the grounds.

AO 243 REV 6/82

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Deni

porting FACTS (tell your story briefly without citing cases or law:	<u>See Attached</u>
morandum of <u>Law</u>	
	<u>,</u> -
	<u>.</u>
ound two:	,
	<u> </u>
	- N
	- N
	41
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	41
round three:	
round three:	
ound three:	

ΑO	243	
REV	7 6/8	

D.	Ground four;
	Supporting FACTS (tell your story briefly without citing cases or law):
	4.44
TFF ab-	
	e grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not s and give your reasons for not presenting them:
It is	proper to present a claim based on ineffective assistance of
	THE PARTY OF THE P
	on a motion under Title 28 U.S.C. § 2255.
	THE PARTY OF THE P
consel	on a motion under Title 28 U.S.C. § 2255.
consel	on a motion under Title 28 U.S.C. § 2255.  ve any petition or appeal now pending in any court as to the judgment under attack?
consel  4. Do you have Yes □ No	on a motion under Title 28 U.S.C. § 2255.  We any petition or appeal now pending in any court as to the judgment under attack?  XX
consel  4. Do you have Yes □ No	on a motion under Title 28 U.S.C. § 2255.  ve any petition or appeal now pending in any court as to the judgment under attack?
COUSE 1  4. Do you have Yes □ No.  5. Give the name therein:	on a motion under Title 28 U.S.C. § 2255.  we any petition or appeal now pending in any court as to the judgment under attack?  XX  me and address, if known, of each attorney who represented you in the following stages of the judgment attacks
COUSE 1  4. Do you have Yes □ No 5. Give the name therein:  (a) At pref	on a motion under Title 28 U.S.C. § 2255.  we any petition or appeal now pending in any court as to the judgment under attack?  XX  me and address, if known, of each attorney who represented you in the following stages of the judgment attacks
consel  4. Do you have Yes □ No  5. Give the name herein:  (a) At pref	on a motion under Title 28 U.S.C. § 2255.  We any petition or appeal now pending in any court as to the judgment under attack?  XIX  The and address, if known, of each attorney who represented you in the following stages of the judgment attacks  Liminary hearing Mary Lou Newbergen. 300 Virginia Street. East. Room  O, U.S. Courthouse, Charleston, WV 25301
COUSE 1  4. Do you have Yes □ No of the name therein:  (a) At prefix 13400  (b) At array	on a motion under Title 28 U.S.C. § 2255.  We any petition or appeal now pending in any court as to the judgment under attack?  XX  The and address, if known, of each attorney who represented you in the following stages of the judgment attack.  Itiminary hearing Mary Lou Newbergen. 300 Virginia Street, East, Room  O, U.S. Courthouse, Charleston, WV 25301  Augmment and plea W. Michael Frazier, P.O. Box 2808, Huntington, WV
COUSE 1  4. Do you have Yes □ No of the name therein:  (a) At prefix 13400  (b) At array	on a motion under Title 28 U.S.C. § 2255.  The second state of the sta
consel  4. Do you have Yes □ No 2  5. Give the name herein:  (a) At prefix 3400  (b) At array 2572	on a motion under Title 28 U.S.C. § 2255.  We any petition or appeal now pending in any court as to the judgment under attack?  XX  The and address, if known, of each attorney who represented you in the following stages of the judgment attacks liminary hearing Mary Lou Newbergen. 300 Virginia Street, East, Room O, U.S. Courthouse, Charleston, WV 25301  Diagrament and plea W. Michael Frazier, P.O. Box 2808, Huntington, WV 27-2808
consel  4. Do you have Yes □ No 2  5. Give the name herein:  (a) At prefix 3400  (b) At array 2572	on a motion under Title 28 U.S.C. § 2255.  We any petition or appeal now pending in any court as to the judgment under attack?  XX  The and address, if known, of each attorney who represented you in the following stages of the judgment attacks  Itiminary hearing Mary Lou Newbergen. 300 Virginia Street, East, Room  O, U.S. Courthouse, Charleston, WV 25301  Augmment and plea W. Michael Frazier, P.O. Box 2808, Huntington, WV
consel  4. Do you have Yes   No    5. Give the name herein:  (a) At pref  (b) At arra  257;  (c) At trial	on a motion under Title 28 U.S.C. § 2255.  We any petition or appeal now pending in any court as to the judgment under attack?  XX  The and address, if known, of each attorney who represented you in the following stages of the judgment attacks liminary hearing Mary Lou Newbergen. 300 Virginia Street, East, Room O, U.S. Courthouse, Charleston, WV 25301  Diagrament and plea W. Michael Frazier, P.O. Box 2808, Huntington, WV 27-2808

	(f) In any post-conviction proceeding N/A
	(g) On appeal from any adverse ruling in a post-conviction proceeding N/A
6.	Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and approximately the same time?  Yes \( \subseteq \text{NoXX}
7.	Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes $\square$ No XIX
	(a) If so, give name and location of court which imposed sentence to be served in the future:
	(b) Give date and length of the above sentence:
	(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
	(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be
V	(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to served in the future?
V	(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?  Yes □ No □
	(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?  Yes \sum No \sum  Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.  Signature of Attorney (if any)
	(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?  Yes  No  Signature of Attorney (if any)
	(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?  Yes \sum No \sum  Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.  Signature of Attorney (if any)
	(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?  Yes  No  Signature of Attorney (if any)